IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Second Appeal No. 838 of 2001
(Old No. 127 of 1988)

State of U.P. ...Appellant

Vs

Dalip Singh S/o Sardar Nela Singh
R/o Saw Mili Kaladungi Road,
Haldwani
District Nainital ...Respondents

Sri R.C. Arya learned Standing Counsel for the State

Hon'ble B.C. Kandpal, J.

This appeal has been preferred against the judgment and decree dated 15.12.1987 passed by the Additional District Judge, Nainital in Civil Appeal No. 83 of 1984 arising out from the judgment and decree passed by Munsif, Nainital vide judgment and decree dated 12.07.1984 in Dalip Singh Vs State of U.P. in Civil Suit No. 218 of 1983.

2. Brief facts of the case are that a suit was filed by the plaintiff/respondent for permanent injunction with the allegations that plaintiff/respondent was running a sawmill at Kaladhungi Road, Haldwani as it was the only Source of income of his livelihood and his entire family depends on the income of the sawmill. The plaintiff was running the sawmill since 1968 without any hindrance and after enforcement of *U.P. Ara Machine Ki Asthapana Avam Vinimaya Nivamawali, 1978,* the plaintiff obtained the licence for running the sawmill from the Forest Department after completing all formalities. In the year 1980-81, Sri Govind Singh who was Rautela posted as Range Officer, Flying Squad in the Forest Department of defendant, started harassing the plaintiff on one pretext or the other. The plaintiff preferred an appeal to the Divisional Forest Officer which was pending at the time of filing the suit that the validity of the plaintiff's licence was alive. The plaintiff had also completed all formalities required under

Rules of 1978 and also deposited the renewal fee of his llicence for the year 1983. The photo copy of challan was made as annexure B of the plaint, that the plaintiff's licence was not renewed due to malice and was also illegal. Thereafter, the plaintiff filed a suit for injunction along with an application under Section 80(2) C.P.C. for leave to the court of file the suit without notice under Section 80 C.P.C.

3. The defendant/appellant contested the suit and filed its written statement. The defendant/appellant denied the plaintiff's case and alleged that the licence of plaintiff was never renewed for the year 1982 and for that reason his licence was cancelled on 16.10.1982. It was further pleaded in the written statement that the suit was bed for want of notice under Section 80 C.P.C. and the proper court fee was not paid and the court had no jurisdiction to hear the case.

4. On the basis of the pleadings of the parties, the court below has framed the following issues:-

1. Whether the plaintiff completed all the formalities in containing the licence for running the sawmill?
2. Whether the plaintiff himself was negligent in getting the licence renewal?
3. Whether the defendant cancelled the licence of the plaintiff according to the Rules? If so, its effect?
4. Whether the suit is undervalued and the court fee paid is insufficient?
5. Whether the court had no jurisdiction to hear the suit?
6. To what relief, if any, I the plaintiff entitled?

5. The trial court after having heard learned counsel for the parties and after having perused the entire material

available on record allow the suit of the plaintiff/respondent vide judgment and decree dated 12.07.1984.

6. Aggrieved by the aforesaid judgment and decree the appellant/defendant preferred the appeal before the Additional District Judge, Nainital and the same was dismissed vide judgment and decree dated 15.12.1987.

7. Feeling aggrieved by the aforesaid both the judgments and decree, the State filed this second appeal before the Allahabad High Court, which has been transferred to this court for disposal after creation of new State.

8. Learned counsel for the appellant has pressed the second appeal only on the following substantial questions of law:-

i. Whether as the case was not covered under Section 80(2) of the C.P.C. the application for exemption was incorrectly allowed by the trial court?

ii. Whether the lower appellate court is wrong in finding that before cancellation of licence the plaintiff/respondent ought to have been afforded the opportunity to explain his case?

iii. Whether is was incumbent upon the defendant respondents that the ought to have submitted his explanation whatsoever?

iv. Whether non-submission of any explanation in the office has wrongly been termed that the plaintiff respondent ought to have been offered on the ground of natural justice?

9. Heard Sri Nand Prasad, learned Standing counsel for the State and perused the record.

10. Learned counsel for the appellant has firstly argued that the application under Section 80(2) C.P.C. was never allowed by the trial court and without notice under Section 80 of the C.P.C., the suit is bad.

11. The arguments raised by the learned counsel for the appellant appears to be without any force on the ground that no issue was framed before the court below to that effect whether the suit was bad for wand of notice under Section 80 of the C.P.C. However, the order dated 26 .10.1983 which is available on record of the trial court that the application was allowed and thereafter the trial court registered the suit. The appellant neither before the trial court nor before the appellate court moved any application for framing those issues as to whether the suit was bad for want of notice under Section 80 of the C.P.C. or not.

12. Learned counsel for the appellant has further argued that in a suit against the Government or against a Public Officer while discharging the official duties, a notice under section 80 of the C.P.C. would be mandatory. It has been submitted that the relief of declaration has been sought by the plaintiff/respondent hence the notice under section 80 of the C.P.C. was necessary. Perusal of the additional written statement filed by the State/appellant reveals that the State has not taken any plea that the relief of declaration cannot be granted for want of notice under Section 80 of the C.P.C.

13. In these circumstances, it can be inferred with the appellant must be deemed to have waved the notice.

14. The appellant has further argued that the respondent did not deposit the licence fee for the year 1982

and for that reason the licence of the respondent was cancelled. In this context the perusal of the register of licence filed by the appellant before court below shows that licence fee paid for the year 1982 was adjusted towards the order, 1981. The court below have concluded recorded a finding that there are overwriting in the register and on account of the overwriting the entries in the register have lost the authenticity.

15. Further in view of the settled principle of law it is incumbent upon the appellant to issue notice to the respondent and to afford an opportunity to explain his case before cancellation of licence. The Hon'ble Apex Court in a decision ***Raj Restaurant Vs Municipal Corporation of Delhi*** reported in ***AIR 1982 S.C. page 1550*** has clearly held that the refusal to renew a licence for running restaurant by Delhi Municipal Corporation without notice and opportunity to represent is void.

17. In view of the assessment of the evidence available on record, I come to the conclusion that there is in infirmity in the impugned judgments and decrees passed by the court below. Both the courts below recorded concurrent finding of fact which cannot be interfered at the stage of second appeal. The substantial question of law formulated in the appeal are answered against the appellants.

18. Thus the second appeal lacks merit and is liable to be dismissed.

19. Accordingly, the second appeal is dismissed.

(B.C. Kandpal, J.)

09.10.2006
ASWAL